that he in fact suffered such an injury; this injury or damage must be entirely distinct from the injury to his wife, for, as shown above, in such case he could not be joined with her, but must sue alone. If this conclusion be true, that a husband has no right of action purely and simply because of a wrong to his wife, it follows necessarily that the decision of the Court of Appeals cannot be sustained as technically correct. If, as the court stated, mental distress and physical illness are too remote consequences of a defamatory publication to give the person libeled an action when he must prove special damage, it necessarily follows that they are too remote to support the plaintiff's action in the principal case. Mental distress coupled with physical illness are a "parasitic" form of damages: when an injury is independently proved they may be considered in estimating the amount of that injury, but they cannot in themselves be made the basis of an action.[14]

S. A.

INTERSTATE COMMERCE—EXCLUSIVENESS OF FEDERAL POWER —The problem of defining accurately the exact limits of state and Federal authority respectively, upon matters relating to interstate commerce, and of determining when Federal legislation upon a particular subject is or is not meant to suspend all State rules in the same field is one of the most important and complex questions which confront the courts today. The difficulty arises in the application of the well settled doctrine, definitely announced in *Smith* v. *Alabama*,[1] that in the absence of legislation by Congress upon matters relating to interstate commerce a kind of neutral ground is established in which state regulations, passed under the police power and governing matters of local concern, are valid until Congress chooses to act upon the particular subject.[2] The controversies arising under this doctrine turn upon the question as to whether or not a particular Act of Congress is properly applicable to the subject matter of the case, and as to

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[14] Lord Wensleydale in Lynch v. Knight, 9 H. L. 598 (1861): "Mental pain or anxiety the law cannot value, and does not pretend to redress, when the unlawful act complained of causes that alone; though where a material damage occurs, and is connected with it, it is impossible a jury, in estimating it,should altogether overlook the feelings of the party interested."

See note to Huston v. Freemansburg, 3 L. R. A. (N. S.) 1 (1906) where cases are collected allowing recovery for fright and resulting illness when there has been an actual, if technical, trespass, but refusing such recovery where such damage solely results from the wrongful act and no trespass is shown.

See also, Street, Foundations of Legal Liability, Vol. 1, p. 461.

[1] Smith v. Alabama, 124 U. S. 465 (1887).

[2] The doctrine of Smith v. Alabama is directly affirmed in Chic. Mil. & St. P. Ry. v. Solan, 169 U. S. 133 (1897), and in Penna. R. Co. v. Hughes, 191 U. S. 477 (1903).

In Southern Ry. v. Reid, 222 U. S. 424 (1911), it was expressly stated that there were three degrees to which the states might exercise power over commerce. First, exclusively; second, in the absence of legislation by Congress, until Congress does act; and third, where Congress having legislated, the power of the state cannot operate at all.

whether or not a state's regulation is invalid as exceeding its authority and encroaching upon the field reserved for Federal legislation alone. The correct application of the law in these matters is of great intrinsic difficulty, although the broad principles by which each case should be determined are few in number and comparatively easy to enunciate. In the first place, regulations duly passed by Congress under its constitutional authority to regulate interstate commerce will not necessarily be declared invalid if they also incidentally affect intra-state commerce as well.[3] On the other hand, Congress cannot so legislate upon a matter of interstate commerce as directly and immediately to regulate at the same time matters which, although perhaps connected with interstate commerce, are in themselves properly subject to state control only. Similarly, until Congress has acted, a state can legislate upon questions of commerce involving matters of local concern even though interstate commerce in general is indirectly affected thereby,[5] although any state legislations which results in imposing a direct burden on commerce between the states is invalid.[6]

In applying these principles to the cases which arise the difficulty lies in determining, in the case of a state regulation, whether the enforcement of the statute will, as a matter of fact, affect only incidentally interstate commerce, when the statute will be upheld; or whether the actual result of the state's legislation will be to impose a direct burden upon the general field of commerce between the several states, in which case the state legislation is null and void. No better example of the difficulty of deciding into which category a particular state regulation falls could be found than the problem presented in the celebrated Minnesota Rate case, as yet undecided by the United States Supreme Court; namely, as to what extent a state's regulation of rates within its own territory can be sustained when interstate commerce in general is affected by this legislation. The converse of this proposition, that is, what regulations of Congress upon interstate commerce are invalid as directly affecting matters subject only to state control,

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[3] Southern Ry. v. U. S., 222 U. S. 20 (1911). In this case the Safety Appliance Act of Congress, 27 St. 531. c. 176, Amended 32 St. 943, c. 976, was held constitutional, though it incidentally necessarily affected intra-state commerce also.

[4] Employers' Liability Cases, 207 U. S. 463 (1907). In this case the Federal Act, abolishing certain common law defenses in accident cases occurring in interstate commerce was declared unconstitutional because it failed to distinguish between employes whose work was solely on interstate commerce and those who were only engaged at working in matters of commerce within a state.

[5] Smith v. Alabama, *supra;* Penna. R. R. Co. v. Hughes, *supra.*

[6] Miss. P. R. Co. v. Ill. Cent. R. R. Co., 203 U. S. 335 (1906); Coast Line R. Co. v. Wharton, *et al*, 207 U. S. 328 (1907).

In both these cases orders issued by the state authorities to compel the railroads to stop through express mail trains at certain points within the state to accommodate passengers were overruled by the federal courts as unduly burdensome to interstate commerce in general.

is of comparatively minor importance today, and has only once been recently raised in an important case.[7]

Such being the border lines determining the validity of state and federal legislation respectively, there remains for consideration what Congressional regulations are, in the absence of direct provisions to that effect, from their very nature intended to deprive the several states of their control over different phases of interstate commerce and to impose a uniform federal regulation upon the subject or subjects throughout all the state jurisdictions. In the first place, where the object of the Act of Congress is to prevent any sort of discrimination among shippers, it is clear that the intent of Congress is that this result is to be achieved by having one uniform regulation upon the matter and to abolish differences in state rulings whereby shippers in some states are in a better position than those in other communities. When, therefore, the Federal statute from its very nature indicates the desirability of uniformity in construction it will be binding upon all state courts, and state regulations on the same matter became invalid.[8] On the other hand, the mere authorization of the Interstate Commerce Commission to control a particular subject does not, in the absence of action on the part of that body, prohibit all state regulations on the same matter,[9] nor does the fact that the Commission has defined certain acts as discriminatory prevent a state from prohibiting other acts for the same reason.[10] So also the fact that Congress has legislated in respect to the safety of those engaged in interstate commerce[11] does not deprive the states of their power to regulate the size of train-crews,[12] or the payment of wages,[13] or to prescribe a penalty for delay.[14] Again, a state may require a carrier to settle within a specified time for loss of or damage to freight while in its possession within the state,[15] but it cannot compel a carrier, to whom freight is tendered for transportation beyond its own line, to become liable for the default of succeeding carriers when the transaction is one of interstate commerce.[16] It appears, moreover, that within its borders a state may lessen the liability of a carrier even when engaged in interstate commerce.[17] In construing legislation upon this subject in general, it appears that a state statute need not be directly inconsistent with the

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[7] Note 4, *supra*.
[8] Tex. & Pac. Ry. Co. v. Abilene Cotton Oil Co., 204 U. S. 426 (1906).
[9] Miss. Pac. Ry. Co. v. Larrabee Flour Mills, 211 U. S. 612 (1908).
[10] Puritan Coal Mining Co. v. Penna. R. R. Co., 237 Pa. 420 (1912).
[11] The Safety Appliances Act, see Note 2, *supra*.
[12] Pittsburgh, C. C. and St. L. R. Co. v. State, 172 Ind. 147 (1908).
[13] State v. Missouri Pac. R. Co., 147 S. W. Rep. 118 (Mo., 1912).
[14] Traynham v. Charleston & Car. Ry., 71 S. E. Rep. 813 (S. C., 1911).
[15] At. Coast Line R. Co. v. Mazursky, 216 U. S. 122 (1910).
[16] Central R. R. of Ga. v. Murphy, 196 U. S. 194 (1904).
[17] Martin v. P. and L. E. R. Co., 203 U. S. 284 (1906), sustaining the constitutionality of Pa., Act of April 4, 1868, P. L. 58, making a railroad's liability for injury to a postal clerk the same as to a railroad employee.

federal regulation to be invalid,[18] though a clear intention to suspend the state's power must be shown[19] and the action of Congress must be specific in order to be paramount.[20]

A typical instance of the variations of opinion as to how far Congress, by its legislation, intends to place a particular field of interstate commerce under uniform federal regulation alone is found in the decisions construing the Carmack Amendment to the Hepburn Act[21] in its bearing on contracts lessening the liability of carriers. Prior to the passage of this Act in 1906, the rule on the subject of contracts made by carriers in regard to liability on interstate shipments was either that of the general common law as declared by the United States Supreme Court[22] and consequently in force in all the federal tribunals, or that prescribed by the statute law of a particular state[23] or that determined by the supposed public policy of a particular commonwealth,[24] and the federal courts in each instance administered the state law upon the matter,[25] on the theory that such contracts did not raise any federal questions to give a United States court jurisdiction, because they were held not to be in any way a regulation of interstate commerce.

Since its enactment the Carmack Amendment has been frequently construed by various state courts as to its bearing upon state rules in regard to these agreements, but it was not until very recently indeed that the point was decided in the United States Supreme Court. As is pointed out in a very able review of this subject in Vol. 60 U. of P. Law Rev., p. 38 (1911), the earliest cases upon this field, while silent upon the effect of the Amendment upon so-called agreements of valuation, were not in harmony as to the precise meaning and scope of the statute in general. In *Southern Pac. Co.* v. *Crenshaw*[26] the Georgia Supreme Court held that the Amendment only covered all contracts made

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[18] Southern Ry. Co. v. Reid, 222 U. S. 424 (1911).

[19] Reid v. Colorado, 187 U. S. 137 (1902).

[20] Miss. Pac. Ry. Co. v. Larrabee Flour Mills, 211 U. S. 612 (1908).

[21] Act June 29, 1906; 34 St. 584, c. 3591.

The Amendment makes the initial carrier liable for any loss caused by it or any subsequent carrier and forbids contracting out of this liability, with the added proviso that the shipper shall not be deprived of any remedy he has under existing law.

[22] Hart v. Penna. R. R. Co., 112 U. S. 331 (1884). Limited liability contracts when made on the basis of the shipper's valuation and in consideration of reduced rates were declared valid.

[23] Chicago, etc. R. Co. v. Solan, 169 U. S. 133 (1897). A state statute forbidding any contract in limitation of liability for damage occurring within the state was held valid and binding on an interstate shipment of goods.

[24] Grogan v. Adams Express Co., 114 Pa. 523 (1886). In this case the Penna. court refused to accept as binding on them the contrary federal doctrine announced in Hart v. Penna. R. R. Co., *supra*.

[25] Penna. R. R. Co. v. Hughes, 191 U. S. 477 (1903). Held, that these contracts did not in themselves present any federal question and consequently the law of the particular state applied. See also R. R. Co. v. Solan, *supra*.

[26] 5 Ga. App. 675 (1908).

by the initial carrier in limitation of its liability after the shipment had passed to connecting carriers and rendered such contracts void. They further declared that, under the Abilene Oil case rule, the Amendment overruled all state regulations upon this matter; and the same view was taken in a subsequent New Jersey case.[27] In New York[28] and Massachusetts,[29] however, the conclusion was reached that contracts limiting the liability of the carrier to a lesser valuation agreed upon between shipper and carrier and upon which a lower rate was charged were not in reality contracts in limitation of liability within the meaning of the Act. The view adopted in the review of this matter referred to *ante* was that in 1911 the opinion of the courts seemed to be that the Carmack Amendment neither prohibited nor sanctioned these so-called valuation agreements and that such contracts, not being included within the scope of this federal legislation, were still to be construed according to the various state laws. The correctness of this conclusion was borne out by subsequent decisions of the State Supreme Courts of Pennsylvania in *Wright* v. *Adams Ex. Co.*;[30] of North Carolina in *Pace Mule Co.* v. *Seaboard Air Line R. Co.*,[31] and of South Carolina in *Elliott* v. *At. Coast Line Ry. Co.*[32] In a word, the state courts have been practically unanimous in declaring that the Federal Statute of 1906 did not show an intent on the part of Congress to exclude the states from applying their individual law upon these valuation agreements, and consequently the doctrine of *Penna. R. R. Co.* v. *Hughes*[33] should still apply.

These state court decisions, recent as they are, have all been overruled and the entire question as to the validity of contracts of this character has been finally settled by one of the latest decisions of the United States Supreme Court. In *Adams Express Co.* v. *Croninger*,[34] decided in January, the Supreme Court held that in enacting the Carmack Amendment Congress intended to adopt a uniform rule as to the liability imposed upon interstate carriers by the regulations contained in bills of lading and to relieve such contracts from the diversity of interpretation to which they had heretofore been subjected. The opinion then concluded that the provision of the act forbidding exemptions from liability imposed by the act was not violated by these valuation agreements, and, therefore, the common law doctrine laid down in *Hart* v. *Penna.*

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[27] Travis v. Wells Fargo Co., 79 N. J. L. 83 (1909).
[28] Greenwald v. Barrett, 199 N. Y. 170 (1910).
[29] Bernard v. Adams Express Co., 205 Mass. 254 (1910).
[30] 230 Pa. 635 (1911). In this case it was expressly declared that the Carmack Amendment did not require the Penna. courts to administer the contrary federal law, and see following this decision Dodge v. Adams Ex. Co., 61 Pa. Sup. Ct. 474 (December, 1912).
[31] 76 S. E. Rep. 513 (N. C., 1912).
[32] 75 S. E. Rep. 886 (S. C., 1912).
[33] *Supra.*
[34] 226 U. S. 491 (1913).

R. R. Co.[35] applied and such contracts were valid. It follows accordingly that, since the act is construed as showing an intent upon the part of Congress to place this entire field under federal jurisdiction only, the federal construction of such contracts must be binding upon the various state courts.

The conclusion reached, therefore, is that the doctrines announced in *Penna. R. R. Co.* v. *Hughes*[36] and *Chicago, etc. R. Co.* v. *Solan*[37] have been abolished by the Carmack Amendment, and all questions of the construction of contracts relating to a carrier's liability must be determined by the various state courts in accordance with the views of the federal tribunals on the subject. The chief interest of the decision lies in its indication of the great importance of the principle laid down in the famous Abilene Oil case in regard to the desirability of uniform regulations in interstate commerce, though it is also illustrative of the application of this doctrine as well as indicative of the present tendency of the Supreme Court to extend as far as possible the federal control over matters relating to commerce between the states.

P. C. M., Jr.

LEGAL ETHICS—Three more of the questions and answers published by the New York County Lawyers Association Committee on Professional Ethics are given here, in the belief they will be of interest to our readers.

QUESTION:

Would you consider it unprofessional for a lawyer, who is the attorney for executors, about to account, to write to a large number of European legatees who are not represented by an attorney, advising them to be so represented in this County and suggesting the name of a reputable lawyer here, and enclosing a Power of Attorney and asking for its execution and proper acknowledgment? Funds being ample to pay all such legatees in full and the attorney to receive payment thereof, and transmit to them less his stated charges for collection? All this with the view of expediting the accounting and saving time and expense in advertising the citation. And this with no expectation or understanding of division of fees or any possible suggestion of condoning any possible irregularities in the accounting?

ANSWER:

In our opinion, it is not proper professional conduct for a lawyer in the case stated to volunteer the name or urge the employment of an attorney to represent parties whose interests or position on the record may be adverse.

QUESTION:

Is it the opinion of the Committee that members of the Bar should not resort to the solicitation of business by means of a communication in the following form?

"Gentlemen:

I would like to submit a proposition to take care of all your legal matters under a yearly contract at less than your collections alone now cost; in order to make a client of you.

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[35] *Supra.*
[36] *Supra.*
[37] *Supra.*